

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor,

v.

Case No. 14-FJ-5-HE

NOVA GROUP, INC.,

Respondent/Judgment Debtor

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

ASSET SERVICING GROUP, LLC

Respondent/Garnishee,

SDH HOLDING, LLC

Respondent/Garnishee

and

AVON CAPITAL, LLC, a Wyoming
Limited Liability Company,

Intervenor.

**INTERVENOR AVON CAPITAL, LLC’S OBJECTIONS TO
RECEIVER’S NOTICE OF COMPENSATION ARRANGEMENT,
APPLICATION FOR ORDER APPROVING DISTRIBUTION OF
SDM HOLDING, LLC TO ITS SOLE MEMBER, AND AMENDED
APPLICATIONS FOR ORDER APPROVING PAYMENT OF
RECEIVER’S NOVEMBER AND DECEMBER FEES AND COSTS**

Intervenor Avon Capital, LLC, a Wyoming limited liability company (“Avon Capital-WY”), objects to Receiver Ryan Leonard’s Notice of Compensation Arrangement (Doc. 356), Application for Order approving Distribution of SDM Holding,

LLC to Its Sole Member (Doc. 359), and Amended Application(s) for Order Approving Payment of Receiver's November and December Fees and Costs (Doc. 360 and 361) (collectively referred to herein as "Motions"). In support of these objections, Avon Capital-WY states as follows:

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Avon Capital-WY incorporates the factual background and procedural history set forth in its objections to payment of the receiver's October fees and Petitioner Universitas Education, LLC's application for ordering permitting payment of certain debts. (*See* Docs. 333 and 346).

II. ARGUMENTS AND AUTHORITIES

Avon Capital-WY has appealed the Court's finding of *alter ego* liability. (*See* Doc. Nos. 315 and 316). Avon Capital-WY has also appealed the Court's appointment of a Receiver, which the Tenth Circuit subsequently consolidated with Avon Capital-WY's appeal of the finding *alter ego* liability.¹

Furthermore, Avon Capital-WY objected to payment of the receiver's October fees and Petitioner Universitas Education, LLC's application for order permitting payment of certain debts.² (*See* Docs. 333 and 346). Avon Capital-WY will not restate its arguments set forth in those objections and instead incorporates the merits of its briefing on those motions. (*See* Docs. 333 and 346).

¹ Universitas filed its Appellee's brief on February 4, 2022. The deadline for Avon Capital-WY and SDM Holding to file their respective Appellant reply briefs is February 25, 2022.

² This Court denied Universitas' application for order permitting payment of certain debts.

Consistent with Avon Capital-WY's appeal pending before the Tenth Circuit, for the purposes of the record and to avoid waiver, Avon Capital-WY maintains its objection to the appointment of the Receiver and all motions that follow as a consequence of that appointment. Accordingly, to avoid waiving that objection, Avon Capital-WY objects to the motions that flow from that appointment, including the compensation arrangement for Nicole Jacobsen, who the Receiver has appointed as manager of SDM holdings. Avon Capital-WY also objects to payment of fees to the extent it is related to appointment of the Receiver. And Avon Capital-WY objects to the distribution of funds out of SDM Holdings.

Prior to appointing the Receiver, the Court enjoined Avon Capital-WY from disposing of assets/membership interest in SDM Holdings and enjoined SDM Holdings from disposing or otherwise transferring assets. (Doc. 228). These injunctions have been an effective means to maintain the status quo. They have also accomplished the Court's stated purpose of the receivership, which is to preserve Avon Capital-WY's membership interest in SDM Holdings, and ultimately, to preserve the value of the portfolio held by SDM Holdings. Furthermore, historically, even before the injunctions, SDM Holdings has not made regular distributions to Avon Capital-WY.

The transfer of any assets owned by SDM Holdings prior to the resolution of the appeals pending before the Tenth Circuit is a drastic remedy when there is no certainty that the Court's determination on *alter ego* will be upheld. If the Tenth Circuit does not uphold the Court's finding of *alter ego* liability against Avon Capital-WY, and the subsequent appointment of a Receiver, the result would be incurable prejudice to Avon Capital-WY.

Were the Court to approve any one of the identified Motions pending before this Court, and the Tenth Circuit does not affirm the Court's finding of *alter ego* liability or the appointment of the Receiver, then Avon Capital-WY will be unduly burdened and prejudiced by the distribution of any assets out of SDM Holdings to compensate the Receiver.

III. CONCLUSION

For the purposes of the record, Avon Capital-WY maintains its objection to the appointment of the Receiver, which is on appeal, and all motions that flow from that appointment, including: the Receiver Ryan Leonard's Notice of Compensation Arrangement (Doc. 356), Application for Order approving Distribution of SDM Holding, LLC to Its Sole Member (Doc. 359), and Amended Application(s) for Order Approving Payment of Receiver's November and December Fees and Costs (Doc. 360 and 361). Alternatively, Avon Capital-WY prays that this Court not issue a determination on the Receiver's Applications until the Tenth Circuit has resolved the consolidated appeals. (*See id.*).

/s/ Alan L. Rupe

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CERTIFICATE OF SERVICE

I certify that on February 4, 2022, I electronically filed the above using the CM/ECF System. Based on the records on file, the Clerk of Court will transmit a Notice of Electronic Filing to the counsel of record.

/s/ Alan L. Rupe

Alan L. Rupe